

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent
State of New Jersey - Executive Branch
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625

By: Jaclyn M. Frey
Deputy Attorney General
(609) 376-3100
Jaclyn.Frey@law.njoag.gov

IN RE COMPLAINT FILED BY THE	:	STATE OF NEW JERSEY
FRANKLIN TOWNSHIP BOARD OF	:	COUNCIL ON LOCAL MANDATES
EDUCATION REGARDING P.L.	:	CONSOLIDATED DOCKET NOS.:
2020, CHAPTER 44	:	
	:	COLM-1-21
	:	COLM-1-21A
	:	COLM-1-21B
IN RE COMPLAINT FILED BY THE	:	
LOWER TOWNSHIP ELEMENTARY	:	<u>CERTIFICATION OF COUNSEL</u>
BOARD OF EDUCATION REGARDING	:	
P.L. 2020, CHAPTER 44	:	
	:	
	:	
IN RE COMPLAINT FILED BY THE	:	
GLOUCESTER CITY BOARD OF	:	
EDUCATION REGARDING P.L.	:	
2020, CHAPTER 44	:	
	:	
	:	

I, JACLYN M. FREY, being of full age, hereby certify that:

1. I am an attorney at law of the State of New Jersey, and I am the Deputy Attorney General responsible for the care and management of this file on behalf of the Executive Branch of the State of New Jersey. As such, I am fully familiar with the facts set forth herein.

2. Attached hereto as Exhibit A is a true and accurate copy of the Unfair Practice Charge filed with the Public Employment Relations Commission under PERC Dkt. No. CO-2021-139.

3. Attached hereto as Exhibit B is a true and accurate copy of the Petition of Appeal filed with the Commissioner of Education under OAL Dkt. No. EDU 01448-2021/Agency Ref. No. 3-1/21, without exhibits.

4. Attached hereto as Exhibit C is a true and accurate copy of the Petition of Appeal filed with the Commissioner of Education under OAL Dkt. No. EDU 01442-2021/Agency Ref. No. 1-1/21, without exhibits.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: /s/ Jaclyn M. Frey
Jaclyn M. Frey
Deputy Attorney General

Dated: October 12, 2021

EXHIBIT A



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
PO Box 420
TRENTON, NEW JERSEY 08625-0420
UNFAIR PRACTICE CHARGE

For Courier Delivery
495 West State St.
Trenton, NJ 08618

www.state.nj.us/perc

Phone: 609-292-8760

Fax: 609-777-0089

		DO NOT WRITE IN THIS SPACE	
		DOCKET NO. <u>002021-139</u>	
		DATE FILED: <u>JAN 08 2020</u>	
1. CHARGING PARTY			
Full Name: Franklin Township Education Association		County: Somerset	
Address of Charging Party (Street and Number, City, State and Zip Code): P.O. Box 5251, Somerset, NJ 08875			
Name and Title of Representative/Attorney/Consultant in Contact: Richard A. Friedman, Esq., Zazzali, Pagella, Nowak, Kleinbaum & Friedman		Telephone No.: (609) 392-8172	
Representative/Attorney/Consultant Address (Street and Number, City, State and Zip Code): 150 W. State Street, 3rd Floor, Trenton, NJ			
2. RESPONDENT(S) (public employer and/or employee organization against whom the charge is made)			
Respondent 1	Full Name: Franklin Township Board of Education	County: Somerset	
Address of Respondent (Street and Number, City, State and Zip Code): 2301 Route 27, Somerset, NJ 08873			
Name and Title of Representative/Attorney/Consultant in Contact: Dr. John A. Kavally, Superintendent of Schools		Telephone No.: (732) 873-2400	
Representative/Attorney/Consultant Address (Street and Number, City, State and Zip Code): 2301 Route 27, Somerset, NJ 08873			
Respondent 2 (if any)	Full Name:	County:	
Address of Respondent (Street and Number, City, State and Zip Code):			
Name and Title of Representative/Attorney/Consultant in Contact:		Telephone No.:	
Representative/Attorney/Consultant Address (Street and Number, City, State and Zip Code):			
INSTRUCTIONS FOR FILING AN UNFAIR PRACTICE CHARGE			
<p>(1) Type or clearly print all information and complete all sections of the charge.</p> <p>(2) Under "Statement of Charge," provide a CLEAR AND CONCISE statement of the facts constituting the alleged unfair practice. If you need more space for your statement, then attach it to the charge. You may not rely on other documents (such as letters or memoranda) submitted with the charge to constitute your statement.</p> <p>(3) The charge must:</p> <p style="margin-left: 20px;">a. list the subsections of the Act alleged to have been violated;</p> <p style="margin-left: 20px;">b. specify the date, and, to the extent known, the place the alleged acts occurred and the names of the persons alleged to have committed such acts.</p> <p>(4) State specifically the remedy you are asking the Commission to order.</p> <p>(5) Sign the Certification in box #6.</p> <p>(6) File an original and four copies with the Director of Unfair Practices, Public Employment Relations Commission, at the above address.</p> <p>(7) Include with your filing proof that you served a copy of the charge on the respondent(s). Proof can take the form of a statement explaining how, when, and on whom the charge has been served.</p>			
A CHARGE WILL NOT BE PROCESSED IF THE ABOVE REQUIREMENTS ARE NOT MET.			
3. STATEMENT OF CHARGE			
Pursuant to the New Jersey Employer-Employee Relations Act, as amended, the charging party hereby alleges that the above-named respondent(s) has (have) engaged or is (are) engaging in an unfair practice within the meaning of N.J.S.A. 34:13A-4(a), subsection(s) (1) and (2) and N.J.S.A. 34:13A-5, (a), subsection(s) _____ in that _____ (List subsections) and/or N.J.S.A. 34:13A-5, (a), subsection(s) _____ (List subsections)			
See attached Rider.			

(See next page for additional space)

Statement of Charge Continued

See attached Rider

4. REMEDY SOUGHT (State the remedy you request the Commission to order)

See attached Rider.

5. PLEASE ADVISE:

1) Has a grievance been filed which is based upon the same facts alleged in the charge or is otherwise related to the charge?

Yes No If yes, what is the status of the grievance?

The grievance was placed into abeyance on December 7, 2020.

2) Are there any filings at PERC, in court, at the Office of Administrative Law, or before any other administrative agency which are based upon the same facts alleged in the charge or are otherwise related to the charge?

Yes No If yes, please specify what they are. If possible, please include docket numbers.

A Petition of Appeal is being submitted to the Commissioner of Education.

3) Are the parties in negotiations?

Yes No If yes, in what stage of the negotiations process are the parties (negotiations, mediation, fact-finding, super conciliation, interest arbitration)? Please include the date of the next scheduled negotiations session.

6. CERTIFICATION

I declare that I have read the above charge and that the information is true to the best of my knowledge and belief.

By


(Signature)

ETCA PRESIDENT
(Title)

1/6/2021
(Date)

RIDER TO UNFAIR PRACTICE CHARGE

3. STATEMENT OF CHARGE

1. Petitioner Franklin Township Education Association ("Association") is the majority representative, pursuant to N.J.S.A. 34:13A-1 et. seq., representing all certified personnel, as well as non-certified personnel including secretaries, attendance officers, registered nurses, instructional paraprofessionals, and transportation paraprofessionals under contract with and employed by Respondent Franklin Township Board of Education ("Board" or "District") as identified pursuant to Article 1(A) of the collective negotiations agreement ("CNA") between the Association and Board. Pursuant to said status, petitioner Franklin Township Education Association is authorized to and required to act on behalf of all bargaining unit members employed by Respondent with respect to matters relating to their employment and is so acting herein. A copy of the current CNA between the parties in effect for the 2018-2019 through 2020-2021 school years is attached hereto as Exhibit A.
2. The Association is an employee representative within the meaning of N.J.S.A. 34:13A-1, et seq. The Board is a public employer within the meaning of N.J.S.A. 34:13A-1, et seq.
3. N.J.S.A. 18A:16-13.2(a) provides, in relevant part, the following:
 - (1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L. 1979, c. 291 (C. 18A:16-12 et seq.) shall offer to its employees, and their dependents if any, the equivalent of the New Jersey Educators Plan in the School Employees' Health Benefits Program as that plan design is described in subsection f. of section 1 of P.L. 2020, c. 44 (C. 52:14-17.46.13)...
 - (2) The plans under this section shall be offered by the employer regardless of any collective negotiations agreement between the employer and its employees in effect on the effective date [July 1, 2020] of this act, P.L. 2020, c. 44, that provides for enrollment in other plans offered by the employer. (Emphasis added).
4. In regard to employees who commenced employment prior to July 1, 2020, N.J.S.A. 18A:16-13.2(b) provides, in relevant part, the following:

Prior to January 1, 2021, each employer shall provide an enrollment period during which all employees who commenced employment prior to the effective date [July 1, 2020] of this act shall be required to select affirmatively a plan provided by the employer. If an employee fails to select affirmatively a plan during this enrollment period, the employer shall enroll the employee, and the employee's dependents if any, in the equivalent New Jersey Educators Health Plan offered pursuant to subsection a. of this section for the year January 1, 2021 until December 31, 2021. (Emphasis added).

5. In regard to employees who commence employment on or after July 1, 2020, N.J.S.A. 18A: 16-13.2(c)(1) provides the following:

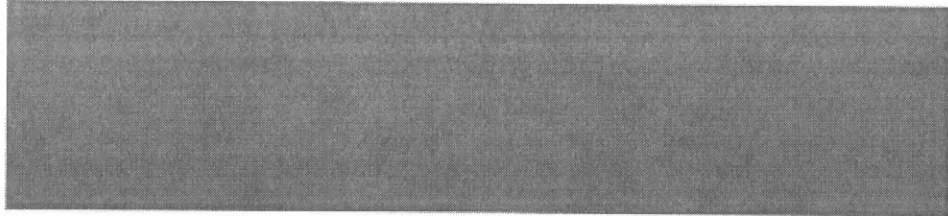
Beginning on January 1, 2021, an employee commencing employment on or after the effective date [July 1, 2020] of this act but before January 1, 2028 who does not waive coverage, shall be enrolled by the employer in the equivalent New Jersey Educators Health Plan, or the equivalent Garden State Health Plan if selected by the employee, as those plans are offered pursuant to subsection a. of this section. The employee shall remain enrolled in either the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan selected by the employee at the annual open enrollment for each plan year until December 31, 2027, provided that the employee during this period may waive coverage as an employee and select and change the type of coverage received under the plan following a qualifying life event, in accordance with the plan regulations. Beginning January 1, 2028, the employee may select, during any open enrollment period or at such other times or under such conditions as the employer may provide, any plan offered by the employer. (Emphasis added).

6. Section 8 of P.L. 2020, c. 44 provides:

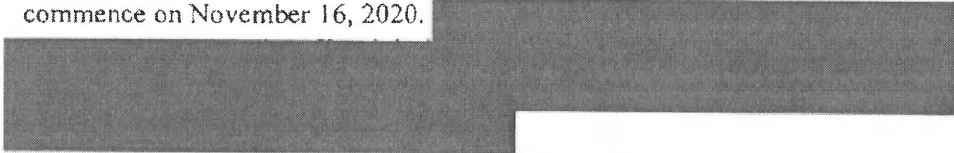
With regard to employers that have collective negotiations agreements in effect on the effective date of this act, P.L. 2020, c. 44, that include health benefits coverage available to employees when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority representative shall engage in collective negotiations over the financial impact of the difference.

7. 

8.



9. Via email dated November 13, 2020, Respondent announced to all staff that open enrollment for health insurance plans beginning January 1, 2021, would commence on November 16, 2020.



10. Regardless of any financial impact to the Board, it must offer the NJEHP equivalent health insurance plan.

11. The Association is ready and willing to negotiate in good faith over the financial impact of the NJEHP equivalent health insurance plan, but is unable to do so based on the Board's refusal to provide relevant and necessary information regarding such plan.

12. The Board refuses to supply the Association with relevant plan details and financial information necessary for good faith negotiations.

13. The open enrollment for health insurance benefits beginning January 1, 2021, has already commenced and ended.

14. The Board has not created a health insurance plan equivalent to the NJEHP, nor has it provided any information to the Association regarding such plan.

15. The Board is not offering the NJEHP equivalent health insurance during the current open enrollment period.

COUNT I

16. The Association repeats, reiterates, and re-alleges paragraphs 1-15 and makes the same a part hereof as though set forth in full.

17. The Board's actions constitute a refusal to negotiate in good faith with the majority representative Association concerning terms and conditions of employment due to its refusal to provide the Association with any necessary information to reach a mutual agreement through negotiations, and its continued refusal to create and implement an NJEHP equivalent health insurance plan.

18. Even if the Board were to offer a health insurance plan equivalent to the NJEHP, the Association's members are unable to make well-informed decisions regarding health insurance coverage due to the Board's failure to provide necessary plan information regarding such plan.
19. By virtue of the above, the Board has committed and is committing violations of the Act, specifically N.J.S.A. 34:13A-5.4(a)(5).

COUNT II

20. The Association repeats, reiterates, and re-alleges paragraphs 1-19 and makes the same a part hereof as though set forth in full.
21. The Board's actions in refusing to provide the Association with relevant NJEHP equivalent plan information, as well as its decision to not offer such plan during the open enrollment, interferes with, restrains and coerces employees in the exercise of their rights guaranteed to them by the act.
22. Even if the Board were to offer a health insurance plan equivalent to the NJEHP, the Association's members are unable to make well-informed decisions regarding health insurance coverage due to the Board's failure to provide necessary plan information regarding such plan.
23. By virtue of the above, the Board has committed and is committing violations of the Act, specifically N.J.S.A. 34:13A-5.4(a)(1) and (5).

4. REMEDY SOUGHT

WHEREFORE, the Association requests that the Commissioner issue an Order:

- (a) Finding and declaring that the Board's actions constitute unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5);
- (b) Directing the Board to immediately create and provide an NJEHP health insurance plan equivalent;
- (c) Directing the Board to immediately provide all NJEHP health insurance plan equivalent information to the Association in order for both parties to negotiate in good faith over the financial impact of such plan;
- (d) Directing the Board to immediately provide all NJEHP health insurance plan equivalent information to the Association's members in order for the members to reach well-informed decisions regarding their health care coverage;
- (e) Requiring the Board to post in all places where notices to employees are customarily posted, copies of a notice of the Commission's determination and the relief afforded on a form provided by the Commission after being signed by the Board's authorized representative;
- (f) Providing counsel fees and costs of suit; and
- (g) Granting such other and further relief as the Commission deems appropriate and necessary to effectuate the purposes of the Act.

EXHIBIT A

AGREEMENT

BETWEEN

FRANKLIN TOWNSHIP
BOARD OF EDUCATION

AND

FRANKLIN TOWNSHIP
EDUCATION ASSOCIATION

2018 – 2021

*for contract
DB*

EXHIBIT B



Franklin Township Public Schools

OFFICE OF THE SUPERINTENDENT
1755 Amwell Road
Somerset, New Jersey 08873

Dr. John Ravally
Superintendent of Schools

Phone: 732-873-2400 ext. 312
Fax: 732-873-8416

October 15, 2020

Daniel Mayer, FTEA President

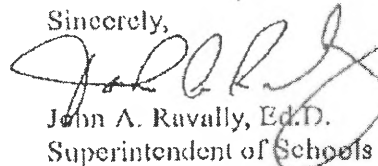
As you are aware, on July 1, 2020, Governor Murphy signed P.L. 2020, Chapter 44 (S2273/A20), which was touted as reducing the health care costs to taxpayers and contributions for school employees who elect the newly created New Jersey Educators Health Plan (NJEHP). The newly created plan was to have an effective date of January 1, 2021.

In theory, the new plan is supposed to save taxpayers and district staff money. However, Paragraph 8 of Chapter 44 reads;

"With regard to employers that have collective negotiation agreements in effect on the effective date of this act, P.L.2020, c.44, that include health care benefits coverage available to employees when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority representative shall engage in collective negotiations over the financial impact of the difference."

Through years of collaborative negotiations between the Franklin Township Board of Education and your association the district would realize a negative financial impact if Chapter 44 were implemented.

Sincerely,



John A. Ravally, Ed.D.
Superintendent of Schools

EXHIBIT C

Meghan Herbert

Subject: FW: Fall Open Enrollment

----- Forwarded message -----

From: **Bonanno, Brian** <bbonanno@franklinboe.org>

Date: Tue, Nov 10, 2020 at 10:48 AM

Subject: Re: Fall Open Enrollment

To: mayer, Daniel <dmayer@franklinboe.org>

[REDACTED]

Thank you,
Brian Bonanno,



Proud Founding Member of Central Jersey Program for the Recruitment of Diverse Educators

~~This e-mail message and any files transmitted with it to Franklin Township Public Schools is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.~~

On Tue, Nov 10, 2020 at 10:01 AM mayer, Daniel <dmayer@franklinboe.org> wrote:

Good Morning Mr. Bonanno,

Thank you for this district-wide email regarding our upcoming open enrollment period. [REDACTED]

Thank you,

Mr. Daniel Mayer
President, Franklin Township Education Association

----- Forwarded message -----

From: **Administration, Benefits** <benadmin@franklinboe.org>

Date: Mon, Nov 9, 2020 at 4:09 PM

Subject: Fall Open Enrollment

To: AllStaff-EntireSchoolDistrict2 <allstaff-entireschooldistrict2@franklinboe.org>

----- Forwarded message -----

From: **Administration, Benefits** <benadmin@franklinboe.org>


Date: Mon, Nov 9, 2020 at 4:09 PM

Subject: Fall Open Enrollment

To: AllStaff-EntireSchoolDistrict2 <allstaff-entireschooldistrict2@franklinboe.org>

Hello all;

As you may know the Legislature enacted Chapter 44 which requires the District to offer additional medical plans through a special Open Enrollment. The District's insurance broker has advised that the premiums for the New Jersey Educators Health Plan (Chapter 44) is higher than our HMO plan. As a result there is a negative financial impact to the District. However Chapter 44 is clear, and it states that if there is negative financial impact the employer and the majority representative shall engage in collective negotiations over the financial impact of the difference.



The District will begin its normal open enrollment process on November 16 and run through December 14.

During this open enrollment you will have the opportunity to:

Switch medical plans

Enroll or dis-enroll dependents

Waive benefits - Must be completed annually

Enroll in or make changes to your Dental plan

Enroll in or make changes to your Vision plan

Enroll in the 2021 FSA plans - Must be completed annually

Confirm current enrollment if not switching plans

Much more information will be sent between now and December 14, 2020

Thank You,

Meghan Herbert

Subject: FW: **2020 Fall Open Enrollment**
Attachments: flex- employee guide (2) (1).pdf; FSA Information (1) (1).docx; FORM-BENEFIT WAIVER (3) (1).PDF; VSP - Member Benefit Summary (1) (1).pdf

----- Forwarded message -----

From: mayer, Daniel <dmayer@franklinboe.org>
Date: Fri, Nov 13, 2020 at 12:12 PM
Subject: Fwd: **2020 Fall Open Enrollment**
To: <danmayerftea@gmail.com>

Thank you,

Mr. Daniel Mayer
President, Franklin Township Education Association

----- Forwarded message -----

From: Administration, Benefits <benadmin@franklinboe.org>
Date: Fri, Nov 13, 2020 at 12:09 PM
Subject: **2020 Fall Open Enrollment**
To: AllStaff-EntireSchoolDistrict2 <allstaff-entireschooldistrict2@franklinboe.org>

Please read this entire message as it contains important information for all staff regarding medical, dental and vision benefits as well as flexible spending account renewals for 2021!

Open enrollment for medical, dental, vision and FSAs will begin on Monday, November 16, 2020!

Changes will take effect on 1/1/21

It is a good idea to log onto bSwift to ensure that all your information is correct!!

Please view the FAQs ([click here](#)), which will answer most questions!!

EXHIBIT B

ZAZZALI, FAGELLA, NOWAK
KLEINBAUM & FRIEDMAN, P.C.
150 West State Street
3rd Floor
T: 603.392.8172
F: 609.392.8933
Attorneys for Petitioners
Richard A. Friedman, Esq.
rfriedman@zazzali-law.com

FRANKLIN TOWNSHIP EDUCATION ASSOCIATION, on behalf of itself, and its bargaining members, JANICE REGAN, and SHEILA HOLLAND	:	BEFORE THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY,
	:	
Petitioners	:	Docket No.:
	:	PETITION OF APPEAL
v.	:	
FRANKLIN TOWNSHIP BOARD OF EDUCATION, SOMERST COUNTY,	:	
	:	
Respondent.	:	

Petitioners, Franklin Township Education Association, having its principal address at 1649 Amwell Road, Somerset, NJ 08873 and its mailing address at P.O. Box 5251, Somerset, NJ 08875, Janice Regan residing at 802 Broad Street, Somerset, NJ 08873, and Sheila Holland residing at 22 Thornton Way, Belle Meade, NJ 08502, hereby request that the Commissioner of Education consider a controversy which has arisen between Petitioners and Respondent, Franklin Township Board of Education, whose address is 1755 Amwell Road, Somerset, NJ 08873, pursuant to the authority of the Commissioner to hear and determine controversies arising under the school laws by reason of the following facts:

FIRST COUNT

1. Petitioner Franklin Township Education Association (“Association”) is the majority representative, pursuant to N.J.S.A. 34:13A-1 et. seq., representing all certified personnel, as well as non-certified personnel including secretaries, attendance officers, registered nurses, instructional paraprofessionals, and transportation paraprofessionals under contract with and employed by Respondent Franklin Township Board of Education (“Board” or “District”) as identified pursuant to Article 1(A) of the collective negotiations agreement (“CNA”) between the Association and Board. Pursuant to said status, petitioner Franklin Township Education Association is authorized to and required to act on behalf of all bargaining unit members employed by Respondent with respect to matters relating to their employment and is so acting herein. A copy of the current CNA between the parties in effect for the 2018-2019 through 2020-2021 school years is attached hereto as Exhibit A.

2. Respondent Board is responsible for the administration and operation of the schools in Franklin Township, and is obligated to comply with all of the requirements under Title 18A and the corresponding revised New Jersey statutes and regulations.

3. Janice Regan is employed by the Respondent Board. She is a member of the Association bargaining unit.

4. Sheila Holland is employed by the Respondent Board. She is a member of the Association bargaining unit.

5. The New Jersey Legislature enacted P.L. 2020 Chapter 44 effective July 1, 2020, which amended the health insurance benefits statutes for school employees. Specifically,

N.J.S.A. 18A:16-13.2 affects all members of the Association.

6. N.J.S.A. 18A:16-13.2(a) provides, in relevant part, the following:

(1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L. 1979, c. 291 (C. 18A:16-12 et seq.) shall offer to its employees, and their dependents if any, the equivalent of the New Jersey Educators Plan in the School Employees' Health Benefits Program as that plan design is described in subsection f. of section 1 of P.L. 2020, c. 44 (C. 52:14-17.46.13)...

(2) The plans under this section *shall* be offered by the employer regardless of any collective negotiations agreement between the employer and its employees in effect on the effective date [July 1, 2020] of this act, P.L. 2020, c. 44, that provides for enrollment in other plans offered by the employer.
(Emphasis added).

7. In regard to employees who commenced employment prior to July 1, 2020,

N.J.S.A. 18A:16-13.2(b) provides, in relevant part, the following:

Prior to January 1, 2021, each employer *shall* provide an enrollment period during which all employees who commenced employment prior to the effective date [July 1, 2020] of this act *shall* be required to select affirmatively a plan provided by the employer. If an employee fails to select affirmatively a plan during this enrollment period, the employer *shall* enroll the employee, and the employee's dependents if any, in the equivalent New Jersey Educators Health Plan offered pursuant to subsection a. of this section for the year January 1, 2021 until December 31, 2021.
(Emphasis added).

8. In regard to employees who commence employment on or after July 1, 2020,

N.J.S.A. 18A: 16-13.2(c)(1) provides the following:

Beginning on January 1, 2021, an employee commencing

employment on or after the effective date [July 1, 2020] of this act but before January 1, 2028 who does not waive coverage, *shall* be enrolled by the employer in the equivalent New Jersey Educators Health Plan, or the equivalent Garden State Health Plan if selected by the employee. as those plans are offered pursuant to subsection a. of this section. The employee *shall* remain enrolled in either the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan selected by the employee at the annual open enrollment for each plan year until December 31, 2027, provided that the employee during this period may waive coverage as an employee and select and change the type of coverage received under the plan following a qualifying life event, in accordance with the plan regulations. Beginning January 1, 2028, the employee may select, during any open enrollment period or at such other times or under such conditions as the employer may provide, any plan offered by the employer.
(Emphasis added).

9. Via letter dated October 15, 2020, the Respondent's Superintendent, John A. Ravally, informed the Association's President, Daniel Mayer, that the Board will not offer an NJEHP equivalent health insurance plan.

10. Via email dated November 10, 2020, Respondent's Assistant Business Administrator, Brian Bonanno, confirmed that the Board will not be offering the NJEHP equivalent health insurance plan effective January 1, 2021, along with an appropriate open enrollment period.

11. Via email dated November 13, 2020, Respondent announced to all staff that open enrollment for health insurance plans beginning January 1, 2021, would commence on November 16, 2020. The NJEHP equivalent health insurance plan was not and will not be offered during Respondent's open enrollment period for plans beginning on January 1, 2021.

12. Not only has the Board continued to deny creating and implementing an NJEHP

equivalent health insurance plan, but it has continually refused to provide relevant and necessary plan information to the Association and its members.

13. Open enrollment for Petitioner's bargaining unit members is November 14, 2020 – December 14, 2020. Throughout the open enrollment period, the Board has refused to supply the Association and its members with relevant plan details and financial information.

14. Most importantly, the Board has not created a health insurance plan equivalent to the NJEHP. Therefore, no such plan is being offered during the current open enrollment period.

15. Petitioner Janice Regan wishes to enroll in the Board's plan equivalent to the NJEHP, referred to in paragraph 6, but no such equivalent plan is being or will be provided by the Board.

16. Petitioner Sheila Holland is interested in enrolling in the Board's plan equivalent to the NJEHP, referred to in paragraph 6, but is unable to reach a decision due to the Board's failure to provide an equivalent plan or to provide any information pertaining to the equivalent plan.

17. Based upon the foregoing facts, the Board has violated N.J.S.A. 18A:16-13.2(a)(1) and (2) by refusing to offer a health insurance plan equivalent to the NJEHP.

WHEREFORE, Petitioners Franklin Township Education Association, Janice Regan, and Sheila Holland request that the Commissioner enter an Order:

- A. Compelling Respondent to provide a plan equivalent to the NJEHP to be effective January 1, 2021 in accordance with school laws;

- B. Compelling Respondent to provide Association members with all information regarding the NJEHP equivalent plan to allow members to reach an informed decision regarding their health insurance plan selection;
- C. Compelling Respondent to provide Association members an additional and appropriate open enrollment period pursuant to N.J.S.A. 18A:16-13.2(b), in which they can enroll in the NJEHP equivalent plan once they are provided with all information regarding such plan and can reach an informed decision;
- D. Compelling Respondent to financially reimburse any affected Association members for any benefits or payment lost due to Respondent's actions; and
- E. For such other relief as the Commissioner deems just and appropriate.

SECOND COUNT

1. Petitioners repeats all of the allegations of the previous Counts of the Petition as if set forth at length herein.
2. The open enrollment period for health insurance benefits beginning January 1, 2021 has already commenced without the NJEHP equivalent health insurance plan being offered.
3. Petitioner's members cannot choose the NJEHP equivalent health insurance plan during this open enrollment period because it is not being offered.
4. Petitioner Janice Regan wishes to enroll in the Board's plan equivalent to the NJEHP, but is unable to do so because of the Board's failure to offer an open enrollment period prior to January 1, 2021.

5. Petitioner Sheila Holland is interested in enrolling in the Board's plan equivalent to the NJEHP, but is unable to reach a decision due to the Board's failure to provide an equivalent plan. If Ms. Holland chose to enroll in the Board's plan equivalent to the NJEHP, he is unable to due to the Board's failure to offer an open enrollment period prior to January 1, 2021.

6. Not only is the NJEHP equivalent health insurance plan unavailable for selection during the open enrollment period, but the Board has failed and refuses to provide the Association and its members with any information regarding such plan.

7. The Board has violated N.J.S.A. 18A:16-13.2(b) by refusing to offer an open enrollment period during which Association members may choose to enroll in a plan equivalent to the NJEHP, if one were available.

WHEREFORE, Petitioners Franklin Township Education Association, Janice Regan, and Sheila Holland request that the Commissioner grant an Order identical to the relief sought in the First Count of this Petition of Appeal.

Respectfully submitted,

ZAZZALI, FAGELLA, NOWAK,
KLEINBAUM & FRIEDMAN
Attorneys for Petitioners

Dated: 1/5/2021

By: /s/Richard A. Friedman
Richard A. Friedman, Esq.

CERTIFICATION OF COUNSEL

I, Richard A. Friedman, counsel for Petitioner, hereby certify that the Petitioner Franklin Township Education Association filed a Level 3 Grievance against the Respondent Board, dated November 11, 2020. The Grievance was placed into abeyance on December 7, 2020. The subject of the grievance involves the same subject as this Petition of Appeal. Additionally, an Unfair Practice Charge on behalf of Petitioner Franklin Township Education Association will be filed as well. The subject of the Unfair Practice Charge will involve the Respondent's failure to negotiate in good faith and failure to provide information required in order to negotiate in good faith pursuant to Chapter 44.

Dated: 1/5/2021

By: /s/Richard A. Friedman
Richard A. Friedman, Esq.

VERIFICATION AND AUTHORIZATION

STATE OF NEW JERSEY

: SS

COUNTY OF SOMERSET

Daniel Mayer, being duly sworn according to law upon his oath deposes and says:

1. I am the President of the Franklin Township Education Association.
2. I have read the Petition and aver that the facts contained therein are true to the best of my knowledge and belief.


Daniel Mayer

VERIFICATION AND AUTHORIZATION

STATE OF NEW JERSEY :
 : SS
COUNTY OF SOMERSET :

Sheila Holland, being duly sworn according to law upon his oath deposes and says:

1. I am a named Petitioner in the above matter.
2. I have read the Petition and aver that the facts contained therein are true to the best of my knowledge and belief.



Sheila Holland

VERIFICATION AND AUTHORIZATION

STATE OF NEW JERSEY :
 : SS
COUNTY OF SOMERSET :

Janice Regan, being duly sworn according to law upon his oath deposes and says:

1. I am a named Petitioner in the above matter.
2. I have read the Petition and aver that the facts contained therein are true to the best of my knowledge and belief.

Janice
Regan _____
Janice Regan

EXHIBIT C

ZAZZALI, FAGELLA, NOWAK
KLEINBAUM & FRIEDMAN, P.C.
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Attorneys for Petitioner
Richard A. Friedman, Esq.
rfriedman@zazzali-law.com

FRANKLIN TOWNSHIP SCHOOL SUPPORT ASSOCIATION : BEFORE THE COMMISSIONER
: OF EDUCATION OF THE STATE
: OF NEW JERSEY.

Petitioner

:
: Docket No.:
: **PETITION OF APPEAL**

v.

FRANKLIN TOWNSHIP BOARD OF,
EDUCATION, SOMERSET COUNTY,

Respondent.

Petitioner, Franklin Township School Support Association, having its principal address at 918 Rabens Avenue, Manville, NJ 08835, hereby requests that the Commissioner of Education consider a controversy which has arisen between Petitioner and Respondent, Franklin Township Board of Education, whose address is 1755 Amwell Road, Somerset, NJ 08873, pursuant to the authority of the Commissioner to hear and determine controversies arising under the school laws by reason of the following facts:

FIRST COUNT

1. Petitioner Franklin Township School Support (“Association”) is the majority representative, pursuant to N.J.S.A. 34:13A-1 et. seq., representing custodians-in-charge; custodians; cleaners; grounds workers; maintenance workers; bus/van drivers; food courier; food services manager; head custodia; assistant head custodian; head grounds worker; food services workers; and campus security personnel/safety officers and district courier under contract with the Board employed by Respondent Franklin Township Board of Education (“Board” or “District”) as identified pursuant to Article 1(B) of the collective negotiations agreement (“CNA”) between the Association and Board. Pursuant to said status, petitioner Franklin Township School Support Association is authorized to and required to act on behalf of all bargaining unit members employed by Respondent with respect to matters relating to their employment and is so acting herein. A copy of the current CNA between the parties in existence from July 1, 2019 – June 30, 2022 is attached hereto as Exhibit A.

2. Respondent Board is responsible for the administration and operation of the schools in Franklin Township, and is obligated to comply with all of the requirements under Title 18A and the corresponding revised New Jersey statutes and regulations.

3. The New Jersey Legislature enacted P.L. 2020 Chapter 44 effective July 1, 2020, which amended the health insurance benefits statutes for school employees. Specifically, N.J.S.A. 18A:16-13.2 affects all members of the Association.

4. N.J.S.A. 18A:16-13.2(a) provides, in relevant part, the following:

(1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing

health care benefits coverage for its employees, and their dependents if any, in accordance with P.L. 1979, c. 291 (C. 18A:16-12 et seq.) shall offer to its employees, and their dependents if any, the equivalent of the New Jersey Educators Plan in the School Employees' Health Benefits Program as that plan design is described in subsection f. of section 1 of P.L. 2020, c. 44 (C. 52:14-17.46.13)...

(2) The plans under this section *shall* be offered by the employer regardless of any collective negotiations agreement between the employer and its employees in effect on the effective date [July 1, 2020] of this act, P.L. 2020, c. 44, that provides for enrollment in other plans offered by the employer.
(Emphasis added).

5. In regard to employees who commenced employment prior to July 1, 2020,

N.J.S.A. 18A:16-13.2(b) provides, in relevant part, the following:

Prior to January 1, 2021, each employer *shall* provide an enrollment period during which all employees who commenced employment prior to the effective date [July 1, 2020] of this act *shall* be required to select affirmatively a plan provided by the employer. If an employee fails to select affirmatively a plan during this enrollment period, the employer *shall* enroll the employee, and the employee's dependents if any, in the equivalent New Jersey Educators Health Plan offered pursuant to subsection a. of this section for the year January 1, 2021 until December 31, 2021.
(Emphasis added).

6. In regard to employees who commence employment on or after July 1, 2020,

N.J.S.A. 18A:16-13.2(c)(1) provides the following:

Beginning on January 1, 2021, an employee commencing employment on or after the effective date [July 1, 2020] of this act but before January 1, 2028 who does not waive coverage, *shall* be enrolled by the employer in the equivalent New Jersey Educators Health Plan, or the equivalent Garden State Health Plan if selected by the employee, as those plans are offered pursuant to subsection a. of this section. The employee *shall* remain enrolled in either the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan selected by the employee at the annual

open enrollment for each plan year until December 31, 2027, provided that the employee during this period may waive coverage as an employee and select and change the type of coverage received under the plan following a qualifying life event, in accordance with the plan regulations. Beginning January 1, 2028, the employee may select, during any open enrollment period or at such other times or under such conditions as the employer may provide, any plan offered by the employer.* (Emphasis added).

7. Via letter dated October 15, 2020, Franklin Township Public Schools Superintendent, John Ravally, informed the Association President, David Werensly, that the Board would not offer the NJEHP equivalent health insurance plan for the plan year beginning January 1, 2021. A copy of this letter is attached hereto as Exhibit B.

8. Not only has the Board continued to deny creating and implementing an NJEHP equivalent health insurance plan, but it has continually refused to provide relevant and necessary plan information to the Association.

9. Open enrollment for Petitioner's members was November 14, 2020 – December 14, 2020.

10. Even throughout the open enrollment period, the Board refused to supply the Association with relevant plan details and financial information.

11. Most importantly, the Board has not created a health insurance plan equivalent to the NJEHP. Therefore, no such plan is being offered during the current open enrollment period.

12. Based upon the foregoing facts, the Board has violated N.J.S.A. 18A:16-13.2(a)(1) and (2) by refusing to offer a health insurance plan equivalent to the NJEHP.

WHEREFORE, Petitioner Franklin Township School Support Association requests that the Commissioner enter an Order:

- A. Compelling Respondent to provide a plan equivalent to the NJEHP to be effective January 1, 2021 in accordance with school laws;
- B. Compelling Respondent to provide Association members with all information regarding the NJEHP equivalent plan;
- C. Compelling Respondent to provide Association members an additional and appropriate open enrollment period in which they can enroll in the NJEHP equivalent plan pursuant to school laws;
- D. Compelling Respondent to financially reimburse any affected Association members for any benefits or payment loss due to Respondent's actions; and
- E. For such other relief as the Commissioner deems just and appropriate.

SECOND COUNT

1. Petitioner repeats all of the allegations of the previous Counts of the Petition as if set forth at length herein.
2. The open enrollment period for health insurance benefits beginning January 1, 2021 has already closed without the NJEHP equivalent health insurance plan being offered.
3. Petitioner's members could choose the NJEHP equivalent health insurance plan during this open enrollment period because it was not offered.
4. The Board has violated N.J.S.A. 18A:16-13.2(b) by refusing to offer an open enrollment period during which Association members may choose to enroll in a plan equivalent to the NJEHP, if one were available.

WHEREFORE, Petitioner Franklin Township School Support Association requests that the Commissioner enter an Order identical to the relief sought in the First Count of this Petition of Appeal.

Respectfully submitted,

ZAZZALI, FAGELLA, NOWAK,
KLEINBAUM & FRIEDMAN
Attorneys for Petitioner

Dated: 1/8/2021

By:

/s/Richard A. Friedman
Richard A. Friedman, Esq.

CERTIFICATION OF COUNSEL

I, Richard A. Friedman, counsel for Petitioner, hereby certify that an Unfair Practice Charge on behalf of the Petitioner, Franklin Township School Support Association will be filed. The subject of the Unfair Practice Charge will involve the Respondent's failure to negotiate in good faith and failure to provide information required in order to negotiate in good faith pursuant to Chapter 44.

Dated: 1/8/2021

/s/Richard A. Friedman
Richard A. Friedman, Esq.

VERIFICATION AND AUTHORIZATION

STATE OF NEW JERSEY

: SS

COUNTY OF _____

David Werensly, being duly sworn according to law upon his oath deposes and says:

1. I am the President of the Franklin Township School Support Association.
2. I have read the Petition and aver that the facts contained therein are true to the best of my knowledge and belief.



David Werensly